

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 17, 2011

SENATE BILL

No. 224

Introduced by Senator Pavley

February 9, 2011

An act to amend ~~Section 10295~~ of Sections 10296, 10335, 10340, and 10430 of, and to add Sections 10295.6 and 10304.1 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 224, as amended, Pavley. Public contracts: Department of Water Resources.

Existing law provides that *all specified* contracts entered into by any state agency for goods, services, or other specified activities, *whether awarded through competitive bidding or not*, are void unless and until approved by the Department of General Services, *and approval shall be denied if the contract does not meet the required specifications of the bidding process*. That law exempts certain transactions and contracts from that law, as specified. *Existing law requires state agencies to secure at least 3 competitive bids for each contract and exempts specified contracts from this requirement.*

This bill would make those laws inapplicable to any contract entered into by the Department of Water Resources for the acquisition, sale, or transmission of power, or for related services, as specified. This bill would authorize the Department of Water Resources to award contracts for the acquisition of specialized equipment for facilities of the State Water Resources Development System, and would require the

Department of Water Resources, in collaboration with the Department of General Services, to establish the conditions under which a contract in excess of \$25,000 is awarded without the competitive bidding process, as specified. This bill would include in the list of exempt contracts that do not require 3 competitive bids, contracts for services for the operation, maintenance, repair, or replacement of specialized equipment at facilities of the State Water Resources Development System and other specified contracts entered into by the Department of Water Resources, as provided. This bill would require the Department of Water Resources to be governed by the laws regarding contracting for goods and services by state agencies, as prescribed.

~~This bill would also exempt from that law specified contracts entered into by the Department of Water Resources.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10295.6 is added to the Public Contract
2 Code, to read:
3 10295.6. Sections 10295 and 10297 do not apply to any
4 contract entered into by the Department of Water Resources under
5 Part 3 (commencing with Section 11100) of Division 6 or Chapter
6 8 (commencing with Section 12930) of Part 6 of Division 6 of the
7 Water Code for the acquisition, sale, or transmission of power, or
8 for services to facilitate such activities.
9 SEC. 2. Section 10296 of the Public Contract Code is amended
10 to read:
11 10296. (a) Every contract entered into by any state agency for
12 any purpose specified in subdivisions (a) to (d), inclusive, of
13 Section 10295, or in Section 10295.6, shall contain a statement by
14 which the contractor swears under penalty of perjury that no more
15 than one final, unappealable finding of contempt of court by a
16 federal court has been issued against the contractor within the
17 immediately preceding two-year period because of the contractor's
18 failure to comply with an order of a federal court which orders the
19 contractor to comply with an order of the National Labor Relations
20 Board. For purposes of this section, a finding of contempt does
21 not include any finding that has been vacated, dismissed, or
22 otherwise removed by the court because the contractor has

1 complied with the order which was the basis for the finding. The
2 state may rescind any contract in which the contractor falsely
3 swears to the truth of the statement required by this section.

4 (b) (1) This section does not apply to a credit card purchase of
5 goods of two thousand five hundred dollars (\$2,500) or less.

6 (2) The total amount of exemption authorized herein shall not
7 exceed seven thousand five hundred dollars (\$7,500) per year for
8 each company from which a state agency is purchasing goods by
9 credit card. It shall be the responsibility of each state agency to
10 monitor the use of this exemption and adhere to these restrictions
11 on these purchases.

12 *SEC. 3. Section 10304.1 is added to the Public Contract Code,*
13 *to read:*

14 *10304.1. Notwithstanding Sections 10301, 10302, and 10304,*
15 *the Department of Water Resources may award contracts for the*
16 *acquisition of specialized equipment for facilities of the State Water*
17 *Resources Development System, as defined in Section 12931 of*
18 *the Water Code. Prior to exercising the authority granted by this*
19 *section, the Department of Water Resources, in collaboration with*
20 *the department, shall establish the conditions under which any*
21 *contract in excess of twenty-five thousand dollars (\$25,000) is*
22 *awarded without the competitive bidding process. The conditions*
23 *shall be developed to expedite operations and maintenance work*
24 *to reduce the risk of the loss of water or power to the State Water*
25 *Resources Development System, and shall require the Department*
26 *of Water Resources to prepare a written document declaring that*
27 *the contract meets those conditions. Consistent with its authority*
28 *under Section 10297, the department shall review those contracts*
29 *for consistency with the conditions established pursuant to this*
30 *section.*

31 *SEC. 4. Section 10335 of the Public Contract Code is amended*
32 *to read:*

33 10335. (a) This article shall apply to all contracts, including
34 amendments, entered into by any state agency for services to be
35 rendered to the state, whether or not the services involve the
36 furnishing or use of equipment, materials, or supplies or are
37 performed by an independent contractor. Except as provided in
38 ~~Section 10351~~ *Sections 10295.6 and 10351, and paragraphs (8)*
39 *and (9) of subdivision (b) of Section 10340, all contracts subject*
40 *to this article are of no effect unless and until approved by the*

1 department. Each contract shall be transmitted with all papers,
2 estimates, and recommendations concerning it to the department
3 and, if approved by the department, shall be effective from the
4 date of approval. This article shall apply to any state agency that
5 by general or specific statute is expressly or impliedly authorized
6 to enter into the transactions referred to in this section. This article
7 shall not apply to contracts for the construction, alteration,
8 improvement, repair, or maintenance of real or personal property,
9 contracts for services subject to Chapter 10 (commencing with
10 Section 4525) of Division 5 of Title 1 of the Government Code,
11 to contracts that are listed as exceptions in Section 10295, contracts
12 of less than five thousand dollars (\$5,000) in amount, contracts of
13 less than five thousand dollars (\$5,000) where only per diem or
14 travel expenses, or a combination thereof, are to be paid, contracts
15 between state agencies, or contracts between a state agency and
16 local agency or federal agency.

17 (b) In exercising its authority under this article with respect to
18 contracts for the services of legal counsel, other than the Attorney
19 General, entered into by any state agency that is subject to Section
20 11042 or Section 11043 of the Government Code, the department,
21 as a condition of approval of the contract, shall require the state
22 agency to demonstrate that the consent of the Attorney General to
23 the employment of the other counsel has been granted pursuant to
24 Section 11040 of the Government Code. This consent shall not be
25 construed in a manner that would authorize the Attorney General
26 to establish a separate program for reviewing and approving
27 contracts in the place of, or in addition to, the program administered
28 by the department pursuant to this article.

29 (c) Until January 1, 2001, the department shall maintain a list
30 of contracts approved pursuant to subdivision (b). This list shall
31 be filed quarterly with the Senate Committee on Budget and Fiscal
32 Review and the Assembly Committee on Budget. The list shall be
33 limited to contracts with a consideration in excess of twenty
34 thousand dollars (\$20,000) during the life of the contract and shall
35 include sufficient information to identify the provider of legal
36 services, the length of each contract, applicable hourly rates, and
37 the need for the services. The department shall add a contract that
38 meets these conditions to the list within 10 days after approval. A
39 copy of the list shall be made available to any requester. The

1 department may charge a fee to cover the cost of supplying the list
2 as provided in Section 6253 of the Government Code.

3 (d) Contracts subject to the approval of the department shall
4 also have the department's approval for a modification or
5 amendment thereto, with the following exceptions:

6 (1) An amendment to a contract that only extends the original
7 time for completion of performance for a period of one year or
8 less is exempt. If the original contract was subject to approval by
9 the department, one fully executed copy including transmittal
10 document, explaining the reason for the extension, shall be sent
11 to the legal office of the department. A contract may only be
12 amended once under this exemption.

13 (2) Contracts let or awarded on the basis of a law requiring
14 competitive bidding may be modified or amended only if the
15 contract so provides or if authorized by the law requiring
16 competitive bidding.

17 (3) If an amendment to a contract has the effect of giving the
18 contract as amended an increase in monetary amount, or an
19 agreement by the state to indemnify or save harmless any person,
20 the amendment shall be approved by the department.

21 *SEC. 5. Section 10340 of the Public Contract Code is amended*
22 *to read:*

23 10340. (a) Except as provided by subdivision (b), state
24 agencies shall secure at least three competitive bids or proposals
25 for each contract.

26 (b) Three competitive bids or proposals are not required in any
27 of the following cases:

28 (1) In cases of emergency where a contract is necessary for the
29 immediate preservation of the public health, welfare, or safety, or
30 protection of state property.

31 (2) When the agency awarding the contract has advertised the
32 contract in the California State Contracts Register and has solicited
33 all potential contractors known to the agency, but has received less
34 than three bids or proposals.

35 (3) The contract is with another state agency, a local
36 governmental entity, an auxiliary organization of the California
37 State University, an auxiliary organization of a California
38 community college, a foundation organized to support the Board
39 of Governors of the California Community Colleges, or an auxiliary
40 organization of the Student Aid Commission established pursuant

1 to Section 69522 of the Education Code. These contracts, however,
2 may not be used to circumvent the competitive bidding
3 requirements of this article.

4 (4) The contract meets the conditions prescribed by the
5 department pursuant to subdivision (a) of Section 10348.

6 (5) The contract has been awarded without advertising and
7 calling for bids pursuant to Section 19404 of the Welfare and
8 Institutions Code.

9 (6) Contracts entered into pursuant to Section 14838.5 of the
10 Government Code.

11 (7) Contracts for the development, maintenance, administration,
12 or use of licensing or proficiency testing examinations.

13 (8) *The contract is for services for the operation, maintenance,*
14 *repair, or replacement of specialized equipment at facilities of the*
15 *State Water Resources Development System, as defined in Section*
16 *12931 of the Water Code, and meets the conditions established by*
17 *the Department of Water Resources for those contracts.*

18 (9) *The contract meets the conditions prescribed by the*
19 *Department of Water Resources for contracts subject to Section*
20 *10295.6.*

21 (c) Any agency which has received less than three bids or
22 proposals on a contract shall document, in a manner prescribed by
23 the department, the names and addresses of the firms or individuals
24 it solicited for bids or proposals.

25 *SEC. 6. Section 10430 of the Public Contract Code is amended*
26 *to read:*

27 10430. This chapter does not apply to any of the following:

28 (a) The Regents of the University of California and the Trustees
29 of the California State University, except that Article 9
30 (commencing with Section 10420) shall apply to the Trustees of
31 the California State University.

32 (b) (1) Transactions covered under Chapter 3 (commencing
33 with Section 12100), except that Sections 10365.5, 10410, and
34 10411 shall apply to all transactions under that chapter.

35 (2) Notwithstanding paragraph (1), Section 10365.5 shall not
36 apply to incidental advice or suggestions made outside of the scope
37 of a consulting services contract.

38 (3) (A) Notwithstanding paragraph (1), Section 10365.5 shall
39 not apply to a contract that is part of a single competitive
40 procurement conducted in more than one stage for information

1 technology goods or services, when the Director of the Department
2 of General Services and the Chief Information Officer determine
3 that there is no conflict of interest under Section 10365.5 and that
4 it is in the best interest of the state to utilize this procurement
5 method. Nothing in this section shall preclude the applicability of
6 Section 12112 to this procurement method.

7 (B) The Department of General Services shall annually submit
8 a report on its Internet Web site describing each determination
9 granted pursuant to subparagraph (A), listing the basis for the
10 determination, and disclosing the total amount of money paid or
11 to be paid to the contractor under the contract that was the subject
12 of the determination. The department shall provide notice to the
13 Joint Legislative Budget Committee within 30 days of the posting
14 of the report.

15 (C) For purposes of this paragraph, “information technology”
16 means information technology goods or services, or both, as
17 appropriate.

18 (c) Except as otherwise provided in this chapter, any entity
19 exempted from Section 10295. However, the Board of Governors
20 of the California Community Colleges shall be governed by this
21 chapter, except as provided in Sections 10295, 10335, and 10389.
22 *The Department of Water Resources shall be governed by this*
23 *chapter, except as provided in Sections 10295.6, 10304.1, 10335,*
24 *and 10340.*

25 (d) Transactions covered under Chapter 10 (commencing with
26 Section 4525) of Division 5 of Title 1 of the Government Code.

27 (e) Except as provided for in subdivision (c), members of boards
28 or commissions who receive no payment other than payment for
29 each meeting of the board or commission, payment for preparatory
30 time, and payment for per diem.

31 (f) The emergency purchase of protective vests for correctional
32 peace officers whose duties require routine contact with state prison
33 inmates. This subdivision shall remain operative only until January
34 1, 1987.

35 (g) Spouses of state officers or employees and individuals and
36 entities that employ spouses of state officers and employees, that
37 are vendored to provide services to regional center clients pursuant
38 to Section 4648 of the Welfare and Institutions Code if the vendor
39 of services, in that capacity, does not receive any material financial
40 benefit, distinguishable from the benefit to the public generally,

1 from any governmental decision made by the state officer or
2 employee.

3 ~~SECTION 1. Section 10295 of the Public Contract Code is~~
4 ~~amended to read:~~

5 ~~10295. (a) All contracts entered into by any state agency for~~
6 ~~(1) the acquisition of goods or elementary school textbooks, (2)~~
7 ~~services, whether or not the services involve the furnishing or use~~
8 ~~of goods or are performed by an independent contractor, (3) the~~
9 ~~construction, alteration, improvement, repair, or maintenance of~~
10 ~~property, real or personal, or (4) the performance of work or~~
11 ~~services by the state agency for or in cooperation with any person,~~
12 ~~or public body, are void unless and until approved by the~~
13 ~~department. Every contract shall be transmitted with all papers,~~
14 ~~estimates, and recommendations concerning it to the department~~
15 ~~and, if approved by the department, shall be effective from the~~
16 ~~date of the approval.~~

17 ~~(b) This section applies to any state agency that by general or~~
18 ~~specific statute is expressly or impliedly authorized to enter into~~
19 ~~transactions referred to in this section.~~

20 ~~(c) This section does not apply to any of the following:~~

21 ~~(1) Any transaction entered into by the Trustees of the California~~
22 ~~State University, by the Board of Governors of the California~~
23 ~~Community Colleges, or by a department under the State Contract~~
24 ~~Act or the California State University Contract Law.~~

25 ~~(2) Any contract of a type specifically mentioned and authorized~~
26 ~~to be entered into by the Department of Transportation under~~
27 ~~Section 14035 or 14035.5 of the Government Code, Sections 99316~~
28 ~~to 99319, inclusive, of the Public Utilities Code, or the Streets and~~
29 ~~Highways Code.~~

30 ~~(3) Any contract entered into by the Department of~~
31 ~~Transportation that is not funded by money derived by state tax~~
32 ~~sources but, rather, is funded by money derived from federal or~~
33 ~~local tax sources.~~

34 ~~(4) Any contract entered into by the Department of Personnel~~
35 ~~Administration for state employee benefits, occupational health~~
36 ~~and safety, training services, or combination thereof.~~

37 ~~(5) Any contract let by the Legislature.~~

38 ~~(6) Any contract entered into under the authority of Chapter 4~~
39 ~~(commencing with Section 11770) of Part 3 of Division 2 of the~~
40 ~~Insurance Code.~~

1 ~~(7) Any contract of a type specifically mentioned and authorized~~
2 ~~to be entered into by the Department of Water Resources under~~
3 ~~the Water Code, or any contract entered into by the Department~~
4 ~~of Water Resources that is not funded by money derived from state~~
5 ~~tax sources, but rather, is funded by money derived from federal~~
6 ~~and local sources.~~

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